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STATUTORY INSTRUMENTS

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**2008 No. 473**

**The Safeguarding Vulnerable Groups Act  
2006 (Transitional Provisions) Order 2008**

**Inclusion in the children’s barred list: persons disqualified from working with children**

- 2.—(1) This article applies to a person, other than a person to whom article 3(1) applies, (“X”)—
- (a) who is—
    - (i) included (otherwise than provisionally) in the list kept under section 1 of the 1999 Act (individuals considered unsuitable to work with children)(1);
    - (ii) subject to a disqualification order; or
    - (iii) subject to a direction under section 142(1) of the 2002 Act (prohibition from teaching etc.), given on the grounds that X is unsuitable to work with children (including any prohibition, restriction or disqualification which has effect as if it were contained in such a direction on those grounds)(2);
  - (b) who has no appeal or review outstanding under the 1999 Act(3) or the 2000 Act(4), or representations, appeal or review outstanding under the 2002 Act(5), or in whose case the time limit for making representations or appealing under those Acts has expired; and
  - (c) who is referred by the Secretary of State to IBB(6).
- (2) IBB must—
- (a) include X in the children’s barred list(7), and
  - (b) subject to paragraphs (5) and (7), give X the opportunity to make representations as to why X should be removed from the children’s barred list.
- (3) Regulation 2 (representations) of the Safeguarding Vulnerable Groups Act 2006 (Barring Procedure) Regulations 2008(8) applies in relation to representations made under paragraph (2)(b) as it applies in relation to representations made under Schedule 3 to the Act.

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- (1) Section 1 was amended by sections 95 to 98 of the CSA.
- (2) Regulation 3(2) to (5) of the Education (Prohibition from Teaching or Working with Children) Regulations 2003 (S.I. 2003/1184 amended by S.I. 2007/195) makes transitional provision so that specified prohibitions, restrictions and disqualifications have effect as if contained in a direction under section 142(1) of the 2002 Act, given on the grounds that the person is unsuitable to work with children.
- (3) An individual included in the list kept under section 1 of the Protection of Children Act 1999 may appeal to the Tribunal under section 4(1) or apply to the Tribunal under section 4A to be removed from the list.
- (4) An individual subject to a disqualification order under the 2000 Act may appeal under section 31 and may apply to the Tribunal under section 32 for a review of that disqualification order.
- (5) An individual subject to a direction under section 142(1) of the 2002 Act may in certain circumstances make representations under regulation 8A, seek a review by the Secretary of State under regulation 9 or by the Tribunal under regulation 10 (subject to regulations 10A and 11), or appeal under regulation 12, of the Education (Prohibition from Teaching or Working with Children) Regulations 2003.
- (6) The Independent Barring Board (“IBB”) was established by section 1 of the Act.
- (7) See section 60(1) of the Act for the meaning of the children’s barred list. Although X is included in the children’s barred list, X will not be barred from engaging in regulated activity in relation to children until section 3(2) of the Act comes into force. X will remain subject to the current restrictions until the provisions repealing the restrictions are brought into force subject to any savings.
- (8) S.I. 2008/474.

(4) IBB must consider any representations made by X and if it appears to IBB in light of those representations that it is not appropriate for X to be included in the children’s barred list, it must remove X from that list.

(5) Part 3 of Schedule 3 to the Act in its application to the functions of IBB under this article has effect subject to the following modifications—

- (a) in paragraph 16(1)—
  - (i) for “any provision of this Schedule” substitute “article 2 of the Safeguarding Vulnerable Groups Act 2006 (Transitional Provisions) Order 2008”; and
  - (ii) for “this Schedule” substitute “that article”;
- (b) after paragraph 16(1), insert—
 

“(1A) A person to whom article 2(2)(b) of the Safeguarding Vulnerable Groups Act 2006 (Transitional Provisions) Order 2008 applies may make representations as to why he should be removed from the children’s barred list in accordance with that provision only in relation to his engaging in regulated activity relating to children which does not constitute work in a regulated position within the meaning of section 36 of the Criminal Justice and Court Services Act 2000.”;
- (c) in paragraph 16(2), for “Schedule” substitute “article 2 of the Safeguarding Vulnerable Groups Act 2006 (Transitional Provisions) Order 2008”;
- (d) in paragraph 18(4), for the words “he was included” to “(as the case may be)” substitute “the date of the most recent disqualification decision made in respect of him”;
- (e) after paragraph 18(4), insert—
 

“(4A) In sub-paragraph (4), “disqualification decision” means—

  - (a) a decision of the Secretary of State—
    - (i) to include the person (otherwise than provisionally) in the list kept under section 1 of the Protection of Children Act 1999, or
    - (ii) not to remove him from that list;
  - (b) a decision of the Tribunal not to direct the person’s removal from the list referred to in sub-paragraph (4A)(a);
  - (c) a decision of the court to make a disqualification order (within the meaning given by paragraph 24(6)(b)) in respect of the person;
  - (d) a decision of the Tribunal, that the person should continue to remain subject to that disqualification order;
  - (e) a decision of the Secretary of State—
    - (i) to make the person subject to a direction under section 142(1) of the Education Act 2002, given on the grounds that the person is unsuitable to work with children (including any prohibition, restriction or disqualification which has effect as if it were contained in such a direction on those grounds), or
    - (ii) not to revoke that direction;
  - (f) a decision of the Tribunal not to order the Secretary of State to revoke the direction referred to in sub-paragraph (4A)(e).”;
- (f) in paragraph 19(1)(a) and (d), for “any of paragraphs 1 to 5 or 7 to 11”, substitute “article 2(1) of the Safeguarding Vulnerable Groups Act 2006 (Transitional Provisions) Order 2008”.

(6) X may appeal to the Tribunal against a decision under this article not to remove him from the children's barred list and section 4 of the Act applies in relation to an appeal under this paragraph as it applies in relation to an appeal under subsection (1) of that section.

(7) Paragraph (2)(b) does not apply to a person if any of the criteria prescribed for the purposes of paragraph 1 of Schedule 3 to the Act as it has effect for the purposes of this paragraph is satisfied in relation to that person.